

REMARKS/ARGUMENTS

Favorable reconsideration of this application is respectfully requested.

Claims 1-12 are pending in this application.

The outstanding Office Action presents a repeated rejection of Claims 1, 3-5, 7-9, 11, and 12 under 35 U.S.C. §103(a) as being unpatentable over Gandhi et al. (U.S. Patent No. 6,944,449, Gandhi) in view of Khaleghi et al. (U.S. Patent No. 6,975,609, Khaleghi) and a repeated rejection of Claims 2, 6, and 10 under 35 U.S.C. §103(a) as being unpatentable over Gandhi in view of Khaleghi and in further view of Peisa et al. (U.S. Patent No. 6,850,540, Peisa).

Initially it is noted that the rejection of Claims 1, 3-5, 7-9, 11, and 12 under 35 U.S.C. §103(a) as being unpatentable over Gandhi in view of Khaleghi has been repeated from the last Action without addressing all of the points raised in the Amendment filed September 20, 2006, traversing this repeated rejection. This failure to answer the substance of all the points raised in the Amendment is submitted to be improper under MPEP §707.07(f) that requires such answers. Accordingly, it is further submitted that this incomplete outstanding Action should be withdrawn and that a new Action that fully treats the substance of all the points raised by the above-noted Amendment should be substituted in its place.

With regard to the above-noted unanswered points, the Amendment filed September 20, 2006, included a traverse of the rejection of Claims 1, 3-5, 7-9, 11, and 12 under 35 U.S.C. §103(a) as being unpatentable over Gandhi in view of Khaleghi because the suggested modification to Gandhi would clearly require "substantial reconstruction and redesign of the elements shown in Gandhi as well as a change in the basic principle under which the Gandhi construction was designed to operate." See the paragraph bridging pages 9 and 10 of this Amendment. This paragraph further cited *In re Ratti*, 270 F.2d 810, 813, 123 USPQ 349, 352 (CCPA 1959) as authority that prohibited this "substantial reconstruction and redesign of

the elements shown in [the primary reference]" and such "a change in the basic principle under which the [primary reference] construction was designed to operate."

The only points actually addressed in the "Response to Arguments" portion of the outstanding Action (in the paragraph bridging pages 6 and 7) were the points raised at page 9, lines 12-18 of the above-noted Amendment. The first of these points noted that "the teachings of Gandhi and those of Khaleghi are not compatible and nothing in either reference suggests the disparate teachings of these references should be combined." The second one noted that "even if combined, neither [reference] teaches the claimed subject matter requiring the calculating of a correction value in accordance with the number of actively connected packet users."

Turning to the rebuttal of Applicants' arguments that these references "are not compatible and nothing in either reference suggests the disparate teachings of these references should be combined," the outstanding Action suggests that because both of the applied references are concerned "with [a] wireless communication system and with a method to limit access to wireless resources according to measured properties," this translates to both references dealing "with the same problem in the same field of art." However, this assertion of "the same problem" is not based on the reference teachings as each reference treats different specific problems in terms of measuring and using different "properties."

In his last respect, the actual reference teachings of Gandhi are concerned with the specific problem of controlling the access of a subscriber station to a wireless communications system so as to facilitate "maintenance of a performance target of the reverse link and desired geographic coverage of the reverse link," as clearly stated in lines 1-4 of the Abstract of this reference, for example. The Amendment filed September 20, 2006, further pointed out that this Gandhi problem required that a threshold be determined by a measured reverse link indicator prior to any access connection and that the Gandhi access

connections were based on a blocking threshold value that was in turn based on the measured reverse link indicator, not on any number of users that are connected or any other criteria.

FIG. 2, step S12 was noted as an example. Another Gandhi species (explained at col. 5, line 59-col. 6, line 59, for example) was also noted to suggest a different approach involving blocking thresholds associated with station loading levels, which station loading levels are again not the equivalent of measuring the number of connected users nor does this load level teaching suggest that some other parameter should be measured.

Moreover, the September 20 Amendment noted that while FIGS. 4 and 5 of Gandhi suggest reverse channel frame error rate monitoring and dropped call monitoring to compare to nominal values to determine if a blocking threshold is to be temporarily altered, such teachings also do not teach or suggest the claimed correction value calculated in accordance with a number users or using someother parameter to make this determination.

The actual teachings and problems of concern to Khaleghi were noted at page 9 of the Amendment filed September 20, 2006, as follows:

Instead of any reverse link threshold criteria or blocking thresholds associated with station loading levels, the concern in Khaleghi is that there are both voice and data users which require different power reserves and that AVE in terms of total traffic expressed in terms of equivalent voice users is needed. See col. 6, lines 59-67. The Khaleghi approach is to calculate powers for voice and data callers and then dynamically allocate resources between these voice and data users as further explained at col. 8, lines 25-31. Thus, the admission of a new voice user depends on residual resources that would remain for data users after grant of access as explained at col. 8, lines 55- 61. Similarly, granting data call access is explained at col. 9, lines 36-38, as being "based on the residual 'reserved' power of data calls rather than the actual power consumed by data calls."

Once again, Khaleghi does not teach or suggest any concern with broadly limiting "access to wireless resources according to [any conceivable] measured properties." Instead, this modification of the actual Khaleghi teaching is the creation of the Patent and Trademark Office (PTO).

This is not the first time that the PTO has improperly attempted to broaden an actual reference teaching by taking it totally out of context and expanding it beyond the limits imposed by that reference context. See *In re Kotzab*, 217 F.3d 1365, 1371, 55 USPQ2d 1313, 1317 (Fed. Cir. 2000) in which the court noted:

While the test for establishing an implicit teaching, motivation, or suggestion is what the combination of these two statements of [the reference] would have suggested to those of ordinary skill in the art, the two statements cannot be viewed in the abstract. Rather, they must be considered in the context of the teaching of the entire reference. Further, a rejection cannot be predicated on the mere identification in [the reference] of individual components of claimed limitations. Rather, particular findings must be made as to the reason the skilled artisan, with no knowledge of the claimed invention, would have selected these components for combination in the manner claimed.

No such findings that correctly treat the reference teachings in the context of these references have been made.

Not only has the PTO improperly taken the above-noted reference teachings as to problems being addressed and the criteria to be measured completely out of context and improperly expand them, it has also improperly suggested that the express words of the claims can be ignored by simply assuming that different words and functions specified by the reference are equivalent thereto. However, the argued calculation of a "loading average of the active packet calls" that is "used to adjust a threshold percentage of the amount of resources to assign to all packet data calls" of lines 11-14 of page 7 of the outstanding Action is not the equivalent of the Claim 1 step requiring "calculating a correction value in accordance with a number of actively connected packet users of said packet switching" simply because the PTO asserts some undefined relationship exists between the argued loading average and the number of active data packet users.

In this regard, Khaleghi teaches (at col. 3, lines 39- 41 that the load of an individual data call is "unpredictable because of the bursty nature of data calls, ranging from a dormant or no load state to a substantial load during a burst period if a high data rate is used." Such

unpredictability of load as to each data call clearly belies the PTO position at lines 11-12 of page 7 of the outstanding action that asserts that "[t]he loading average is related to the number of active data packet users."

Accordingly, and contrary to the assertions in the outstanding Action, the teachings of Gandhi and those of Khaleghi are not compatible and nothing in either reference suggests that the disparate teachings of these references should be combined. Moreover, even if the artisan would, for some unknown reason, combine the actual teachings of these reference, there would still be no resulting subject matter that would calculate the claimed correction value in the required manner, i.e., in accordance with a number of actively connected packet users.

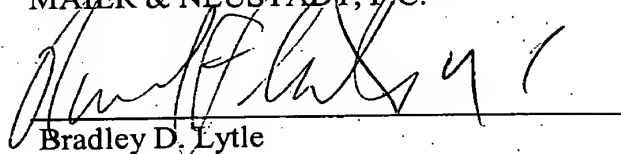
With further regard to the rejection of Claims 2, 6, and 10 under 35 U.S.C. §103(a) as being unpatentable over Gandhi in view of Khaleghi and in further view of Peisa, it is again noted that Peisa does not cure the above noted defects of Gandhi and Khaleghi. Accordingly, as these dependent claims each depend from a respective one of the independent Claims 1, 5, and 9, the rejection of these dependent claims is traversed for the same reasons as the corresponding independent claim. In addition, each of these claims adds further features not taught by these references and the rejection thereof is traversed for this reason as well.

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Reply to Office Action of 11/24/2006

As no other issues are believed to remain outstanding relative to this application, it is believed to be clear that this application is in condition for formal allowance and an early and favorable action to this effect is, therefore, respectfully requested.

Respectfully submitted,

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